

# EXHIBIT A

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**Re: Freedom of Information Act Request: External Communications of Ryan Zinke, David Bernhardt, James Cason, Scott Cameron, and Susan Combs**

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *as amended* ("FOIA"), from Sierra Club, a nonprofit organization whose purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

**REQUESTED RECORDS<sup>1</sup>**

<sup>1</sup> "Records" means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, telephone conversations, faxes, emails, documents, photographs, minutes of meetings, recordings of meetings in any form, and any other compilation of data from which information can be obtained. All of the foregoing are included in this request if they are in the possession of or otherwise under the

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Sierra Club requests Records of the following type in the possession, custody, or control of the U.S. Department of Interior (“DOI”) for the time period starting from **January 23, 2017, through the date of your search for records in response to this request**, related to the following individuals (the “DOI Personnel”):

- A. Secretary of the Interior **Ryan Zinke**
  - B. Deputy Secretary of the Interior **David Bernhardt**
  - C. Associate Deputy Secretary of the Interior **James Cason**
  - D. Principal Deputy Assistant Secretary for Policy, Management and Budget **Scott Cameron**
  - E. Assistant Secretary for Policy Management, and Budget **Susan Combs**
- 
- 1. All emails, text messages, faxes, voice mails, and other form of communications from, or to, the DOI Personnel with any person outside of DOI, as well as any phone logs or other indices which memorialize communications with such persons.
  - 2. All calendars, whether electronic or in paper format, of the DOI Personnel for the above listed time period.
  - 3. All sign-in sheets or other records memorializing attendance at any meetings with the DOI Personnel for the above-listed time period at which a person outside of DOI was in attendance.
  - 4. All emails, faxes, voicemails, text messages or other forms of communication that have been deleted that fit the above specifications and have been deleted, but remain recoverable in any way. If fulfilling this specification requires additional time, we would ask that production of documents meeting specifications 1-3 be given priority and processed separately from any potential responsive records to this specification.

For purposes of this request, the term “person outside of DOI” means any person who is **not** an employee within the DOI, subject to the following exclusions: We are **not** seeking communications to or from persons employed elsewhere within the Executive or Legislative Branches of the United States; persons employed by the executive branch of any state (*i.e.*, state agencies); or persons who have an executed contract to provide consulting or other services to DOI. You may also specifically exclude from processing and release any records that are publicly available (*e.g.*, through regulations.gov).

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control of DOI, including its National Headquarters and all of its Offices or subdivisions.

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In previous FOIA requests dated May 5, May 22, and August 24, 2017 (DOI tracking numbers OS-2017-00524, OS-2017-00599, and OS-2017-01092) Sierra Club sought Secretary Zinke's travel and meeting records during a May trip to Utah, certain correspondence with David Bernhardt, and certain correspondence to and from Secretary Zinke on the issue of national monument boundaries and management. Any materials that have been provided in response to those prior FOIA requests are excluded from the present request.

Sierra Club acknowledges that the DOI FOIA website contains visitor logs for DOI headquarters.<sup>2</sup> The visitor logs posted on the website are excluded from this request. Sierra Club does, however, request all other records reflecting the DOI Personnel's meetings and other communications with persons outside of DOI. The DOI FOIA website also contains a version of Secretary Zinke's calendar that is redacted,<sup>3</sup> as well as redacted versions of the Secretary's travel logs.<sup>4</sup> Sierra Club requests copies of Secretary Zinke's calendar and travel logs for the period specified above that contain no redactions other than redactions of phone numbers or conference dial-in information.

This request includes communication related to DOI that is or was on any system or device, computer, phone, smartphone, tablet, email account, cloud, server or other communication system either **personal or business** that is or was owned or operated by the DOI Personnel or otherwise established for the purposes of communicating with the DOI Personnel.

This request includes all emails or other communications from any **personal** account operated by DOI Personnel which have been forwarded into a DOI government email account.

This request applies to all email accounts assigned to or operated by the DOI Personnel, whether on an official DOI email address or server or not, that relate to official business of DOI. This request applies to so-called "alias" email accounts that may or may not include the name of the DOI Personnel in the email address.

#### **EXEMPT RECORDS**

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and deliver the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

If DOI denies all or part of this request, please cite the specific exemptions you believe justify

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<sup>2</sup> <https://www.doi.gov/foia/os/doi-headquarters-visitor-logs>.

<sup>3</sup> <https://www.doi.gov/foia/os/secretarial-schedules>.

<sup>4</sup> <https://www.doi.gov/foia/os/os-foia-library-travel-records>.

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your refusal to release the information and notify us of your appeal procedures available under the law.

### **FORMAT OF REQUESTED RECORDS**

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”).

We request all records in an electronic .pdf format that is text searchable and OCR formatted. Additionally, please provide the records either in (1) load-ready format with a CSV file index or excel spreadsheet, or, if that is not possible; (2) in .pdf format, without any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily-accessible. Please do not provide the records in a single, or “batched,” .pdf file. We appreciate the inclusion of an index.

### **RECORD DELIVERY**

We appreciate your help in expeditiously obtaining a determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Failure to comply within the statutory timeframe may result in Sierra Club filing an action before the relevant U.S. District Court to ensure timely receipt of the requested materials. You may email copies of the requested records to:

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San Francisco, CA 94105  
415-512-4059  
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Counsel for Sierra Club

Please send documents on a rolling basis. EPA’s search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See generally* 40 C.F.R. § 2.104 (describing response deadlines).

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### FEE WAIVER REQUEST

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 43 C.F.R. § 2.45. Sierra Club is the nation's oldest grassroots organization with more than 2.9 million members and supporters nationwide. Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of environmental protection including climate change, fossil fuel energy, clean energy and clean water. Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.<sup>5</sup>

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989)(internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Sierra Club access to government records without the payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (fee waiver provision intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and non-profit public interest groups.").

As explained below, this FOIA request satisfies the factors listed in DOI's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute. FOIA provides for waiver of fees where "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 43 C.F.R. § 2.45.

DOI's regulations require that fee waiver requests address and meet each of the following criteria: (1) whether the records "concern the operations or activities of the Federal government;" (2) whether "disclosure is likely to contribute to public understanding of those operations or activities, including (i) how the contents of the records are meaningfully informative; (ii) the logical connection between the content of the records and the operations or activities; and (iii) how disclosure will contribute to the understanding of a reasonably broad

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<sup>5</sup> For a recent example, see FOIA Request Reference No. EPA-HQ-2017-2172 (fee letter waiver received Jan. 9, 2017).

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audience of [interested] persons;” (iv) the requester’s “identity, vocation, qualifications, and expertise regarding the requested information” and ability to disclose it; (v) the requester’s ability and intent to disseminate the information; (3) how disclosure is likely to significantly contribute to the understanding of interested persons, including whether the requested information is new and not already available, or would confirm or clarify data previously released; and (4) how the public’s understanding of the subject in question will be significantly enhanced by the disclosure. 43 C.F.R. § 2.48.

Each factor is satisfied here.

**1. The subject matter of the requested records concern identifiable operations and activities of the government.**

The Department of Justice FOIA guide notes that “in most cases, records possessed by a federal agency will meet [the] threshold” requirement that the records concern government activities. DEPARTMENT OF JUSTICE, *Fees and Fee Waivers*, in DEPARTMENT OF JUSTICE GUIDE TO THE FREEDOM OF INFORMATION 27 (2013 ed.). Here, the requested records concern the interactions of high-level agency staffers, including the agency head, with external parties concerning agency business. Because Sierra Club seeks records of communications to and from top agency staff about the official business of DOI (with either a government account or a personal account), by definition the requested records concern the operations and actions of DOI.

**2. The disclosure of the requested records is likely to contribute to public understanding of Federal government operations or activities.**

**a. The content of the requested records are meaningfully informative. (43 C.F.R. 2.48(a)(2)(i).)**

Disclosure of the requested records will allow Sierra Club to convey information to the public about the communications and correspondence of the DOI Personnel, which will reflect their actions, objectives, and priorities. This is an issue of heightened public interest and concern. The DOI Personnel have a history of close alignment with fossil fuel interests and have moved to implement the President’s pro-extraction agenda at the expense of public health and natural resource protection. The following list contains just a sample of the media coverage—including Sierra Club coverage—relating to the connections between the DOI Personnel and the fossil fuel industry.

- Secretary Ryan Zinke:
  - Sierra Club, Lay of the Land, Rep. Zinke: A Primer, Jan. 13, 2017, <http://www.sierraclub.org/lay-of-the-land/2017/01/rep-zinke-primer> (noting



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Zinke's opposition to reform of the coal leasing program and support for mining, drilling and fracking)

- Deputy Secretary David Bernhardt:
  - Sierra Club, Lay of the Land, David Bernhardt Could Further Tip the Scales Against Public Lands, May 1, 2017, <https://sierraclub.org/foundation/lay-of-the-land/2017/05/david-bernhardt-could-further-tip-scales-against-public-lands> (noting close ties to the oil industry)
  - Westwise, Trump Wants This Oil Lobbyist to Watch Over Public Land and Water – And His Former Clients, April 21, 2017, <https://medium.com/westwise/trump-wants-this-oil-lobbyist-to-watch-over-public-land-and-water-and-his-former-clients-2d1e97170c29> (noting conflicts of interest resulting from Bernhardt's ties to extractive industries)
- Associate Deputy Secretary James Cason:
  - Indian Country Today, Interior's James Cason Under Investigation, Sept. 14, 2007, <https://indiancountrymedianetwork.com/news/interiors-james-cason-under-examination/> ("Cason has a long history of involvement at Interior. He is among a group of current and former Interior officials from Colorado who all shared the common experience of having been advocates or lobbyists for big oil, gas, coal and mining corporations that operate on public and Indian lands.").
- Principal Deputy Assistant Secretary for Policy, Management and Budget Scott Cameron:
  - Department of Influence,<sup>6</sup> Scott Cameron, <https://departmentofinfluence.org/person/scott-cameron/> ("Between 2013 and 2017, Cameron held several positions at various companies, including working as a senior advisor at Dawson and Associates. While he worked at Dawson and Associates, the firm lobbied for companies in extractive industries, including the Marcellus Shale Coalition, Shell Oil Company, the Mosaic Company, and the Miami-Dade Limestone Products Association.").
- Assistant Secretary for Policy Management, and Budget Susan Combs:
  - Department of Influence, Susan Combs, <https://departmentofinfluence.org/person/susan-combs/> ("Susan Combs has been a figure in Texas politics for decades and has consistently worked to undermine the Endangered Species Act. . . . Since 2015, Combs has worked as a 'Principal' at the Maravillas Group and has been a Senior Visiting Fellow at the Texas Public Policy Foundation, a right-wing think tank that has received significant funding from ExxonMobil, ConocoPhillips, Devon Energy, and Koch brother affiliates.")

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<sup>6</sup> Department of Influence is a DOI research site compiled by Western Values Project: <https://departmentofinfluence.org/about-us/> <https://departmentofinfluence.org/about-us/>.



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In light of these facts, Sierra Club and its members and supporters are extremely concerned that the DOI Personnel will use their positions within DOI to enact and/or enforce policies that benefit industry interests but ignore scientific reality, harm endangered species and other natural resources, and exacerbate global warming.<sup>7</sup> Access to records of the DOI Personnel's external communications will reveal whether they are communicating with parties tied to fossil fuel interests, shedding light on the motivations behind policy decisions within the agency.

**b. The content of the requested records is logically connected to Federal government operations or activities. (43 C.F.R. 2.48(a)(2)(ii).)**

As explained above, the content of the requested records has a logical connection to government activities; indeed, by definition records of the communications and activities of the DOI Personnel—high-level staffers within the agency—are connected to government operations or activities.

**c. Disclosure will contribute to the understanding of a reasonably broad audience. (43 C.F.R. 2.48(a)(2)(iii).)**

Disclosure of the DOI Personnel's external communications will allow Sierra Club to communicate with its 2.9 million members and supporters about the processes within DOI that are informing policy. Once the requested documents are made available, Sierra Club will analyze them and present its findings to its members and online activists and the general public in a manner that will meaningfully enhance the public's understanding of the DOI Personnel's activities.

If the DOI Personnel are in frequent contact with fossil fuel companies and other industry advocates and taking their interests into account in making policy for the Department, Sierra Club intends to make those facts known to members and the general public.

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<sup>7</sup> See generally Sierra Club, Lay of the Land, Rep. Zinke: A Primer, Jan. 13, 2017, <http://www.sierraclub.org/lay-of-the-land/2017/01/rep-zinke-primer> <http://www.sierraclub.org/lay-of-the-land/2017/01/rep-zinke-primer>, noting that "the Department of the Interior [] plays a critical role in the administration of the Endangered Species Act (ESA)" and noting concerns about science-based decisionmaking in the Department; Sierra Club, Lay of the Land, David Bernhardt Could Further Tip the Scales Against Public Lands, May 1, 2017, <https://sierraclub.org/foundation/lay-of-the-land/2017/05/david-bernhardt-could-further-tip-scales-against-public-lands> <https://sierraclub.org/foundation/lay-of-the-land/2017/05/david-bernhardt-could-further-tip-scales-against-public-lands>.

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**d. Sierra Club is well positioned to, and plans to, disclose the information to further the understanding of a broad audience about DOI's activities. (43 C.F.R. 2.48(a)(2)(iv & v).)**

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, such as: analysis and distribution to the media, distribution through publication and mailing, posting on its website, emailing and listserv distribution to our members across the U.S., and via public meetings and events.

Sierra Club publishes information about DOI policy on its website. For example, recent posts have commented on the policies of DOI under Secretary Ryan Zinke<sup>8</sup> and have commented on Deputy Secretary Bernhardt's nomination.<sup>9</sup>

The Club's website has a wide reach. Every year the Sierra Club website receives 26,298,200 unique visits and over 30 million page views; on average, the site gets 72,049 visits per day.

Sierra Club also disseminates information about public lands and DOI policy through its print communications. Sierra Magazine is a bi-monthly magazine with a printed circulation of approximately 650,000 copies. Sierra Club Insider, an electronic newsletter, is sent to nearly 3 million people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system. In the past, Sierra Club has published, posted, and disseminated numerous stories on coal and coal power plants regarding their impacts on health, the environment and alternative energy. This includes information on Sierra Club's webpages, such as our Beyond Coal Campaign portal, our Clean Energies Solutions portal and our press releases.<sup>10</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> Sierra Club, Lay of the Land, David Bernhardt Could Further Tip the Scales Against Public Lands, May 1, 2017, <https://sierraclub.org/foundation/lay-of-the-land/2017/05/david-bernhardt-could-further-tip-scales-against-public-lands> <https://sierraclub.org/foundation/lay-of-the-land/2017/05/david-bernhardt-could-further-tip-scales-against-public-lands>; Sierra Club, Press Release, Bernhardt a Loser for Parks, Public Lands, July 24, 2017, <http://content.sierraclub.org/press-releases/2017/07/bernhardt-loser-parks-public-lands> <http://content.sierraclub.org/press-releases/2017/07/bernhardt-loser-parks-public-lands>.

<sup>10</sup> For example, Sierra Club sought information about coal export and permitting activities in Oregon via a state public records act request at the Port of Coos Bay. All correspondence is published online and has received extensive media attention from press releases on the subject. *See* Sierra Club Challenges Dirty and Dangerous Fossil Fuel Exports in Oregon, <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon>. Sierra Club also recently publicized the results

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Sierra Club intends to share the information received from this FOIA request with the public at large, our impacted members across the country, the media and our allies who share a common interest in the operations of the Department of the Interior.

Sierra Club unquestionably has the specialized knowledge and ability to disseminate the information requested in the broad manner outlined above. Sierra Club has longstanding experience and expertise in the subject area of the FOIA requests, including issues related to government accountability and transparency, the Clean Air Act, Clean Water Act, climate policy, the protection of the natural environment, and the development and use of energy resources. In addition, the Club's Our Wild America campaign works to "carr[y] on the Sierra Club's long legacy of protecting America's beautiful wildlands," including work to "protect[] our public lands from mining and drilling."<sup>11</sup> The Club employs communications staff who work hard to ensure that that public is informed about the influence of fossil fuel interests in agency policy.<sup>12</sup>

**3. The disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of interested persons.**

**a. The information requested is not publicly available.**

None of the information requested is publicly available; in fact, this request specifically *excludes* information that has already been released to the public.

**b. The release of the requested information will provide an important supplement to the limited information available on DOI's website.**

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of its FOIA requests regarding agency job freeze, a story that was picked up by the Washington Post. Alexander Rony, *Trump Admin Policy Leaves 700 CDC Jobs Vacant*, The Planet, <http://www.sierraclub.org/planet/2017/05/trump-admin-policies-leave-700-cdc-jobs-vacant>; Lena H. Sun, *Nearly 700 vacancies at CDC because of Trump administration's hiring freeze*, The Washington Post, [https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm\\_term=.6c2e70d8581e](https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm_term=.6c2e70d8581e).

<sup>11</sup> Sierra Club, Our Wild America, <http://content.sierraclub.org/ourwildamerica/>.


<sup>12</sup> See, for example, the articles published by online by Virginia Cramer, Senior Press Secretary for the Sierra Club's Our Wild America campaign. <http://www.sierraclub.org/other/authors/virginia-cramer>  
<http://www.sierraclub.org/other/authors/virginia-cramer>.

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DOI has posted on its public website the visitor logs for DOI headquarters. But there is no representation that the logs represent all of the individuals who visit senior agency staffers such as the DOI Personnel; in fact, few, if any, of the entries on the logs reflect visitors to the DOI Personnel. Nor do the logs reflect telephonic and email communications, which are likely much more frequent than communications in person. Finally, the logs do not reflect communications the DOI Personnel may have while traveling outside DOI headquarters. In short, there is no question that the logs are inadequate to inform the public of the extent of the DOI Personnel's communications with external interests.

DOI also has posted on its website redacted versions of Secretary Zinke's calendars and travel logs. Sierra Club does not object to redactions that obscure telephone numbers and similar conference call dial-in information, but is requesting copies of these materials that do not contain any other redactions. Many of the redactions appear to obscure important information about the individuals that the Secretary interacts with. For instance, in the travel logs, the "Vehicle Manifest" and "Elevator Manifest" information is redacted, as in the example below.<sup>13</sup> Assuming the redactions obscure information about which individuals traveled with (and thus had private access to) the Secretary, Sierra Club requests that information.

9:30-9:50pm MST:	Depart Airport en route RON
	Location: 409 2nd Street West
	Whitefish, MT 59937
Vehicle Manifest:	
Drive Time:	~20 minutes without traffic

#### **4. The disclosure will contribute significantly to public understanding of government operations or activities.**

As discussed in section (2) above, the records requested will significantly contribute to the public understanding of governmental operations and activities. Disclosure of the DOI Personnel's communications and other interactions with outside parties will significantly enhance the public's understanding of whether the DOI Personnel is giving due attention to public interest in advancing the stated mission of DOI or is allowing a more narrow set of interests, such as those of the fossil fuel industry, greater influence over DOI's policies.

#### **5. Sierra Club has no commercial interest that would be furthered by the requested**

<sup>13</sup> From log for Thursday, March 9, 2017,  
<https://www.doi.gov/sites/doi.gov/files/uploads/17-001059ca.pdf>  
<https://www.doi.gov/sites/doi.gov/files/uploads/17-001059ca.pdf>, at page 3.

MUNGER, TOLLES & OLSON LLP

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**disclosure.**

Sierra Club has no commercial interest in the requested records, nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. Sierra Club is a nonprofit, tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health. Because the Sierra Club has no commercial interest at all, it is not necessary to consider the sixth criterion for a fee waiver, which compares the magnitude of the commercial interest with the public interest in disclosure.

Sierra Club respectfully requests that DOI waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A) because the public will be the primary beneficiary of this requested information, and Sierra Club’s request meets all of the necessary criteria for a waiver. In the event that your agency denies a fee waiver, please send a written explanation for the denial. Please do not incur expenses beyond \$250 without first contacting counsel for Sierra Club for explicit authorization.

Thank you for your cooperation. If you find that this request is unclear in any way, please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at 415-512-4059 or by email at [ellen.richmond@mto.com](mailto:ellen.richmond@mto.com).

Very truly yours,

/s/ Ellen M. Richmond

Ellen M. Richmond  
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Counsel for Sierra Club

EMR:mp

# EXHIBIT B





September 22, 2017

**Ryan Witt – IRM Governance Division  
Attn: FOIA, Washington Office Coordinators  
1849 C Street, NW  
Mail Stop WO-640  
Washington, DC 20240**

**Re: Freedom of Information Act Request: External Communications of Kathleen Benedetto**

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA”), from Sierra Club, a nonprofit organization whose purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

**REQUESTED RECORDS<sup>1</sup>**

Sierra Club requests Records of the following type in the possession, custody, or control of the U.S. Department of Interior (“DOI”) for the time period starting from **January 23, 2017, through the date of your search for records in response to this request:**

1. All emails, text messages, faxes, voice mails, and other form of communications from or to Acting Deputy Director of the Bureau of Land Management, Kathleen Benedetto with any person outside of DOI, as well as any phone logs or other indices which memorialize communications with such persons.

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<sup>1</sup> “Records” means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, telephone conversations, faxes, emails, documents, photographs, minutes of meetings, recordings of meetings in any form, and any other compilation of data from which information can be obtained. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of DOI, including its National Headquarters and all of its Offices or other subdivisions.

2. All calendars, whether electronic or in paper format, of Ms. Benedetto for the above listed time period.
3. All sign-in sheets or other records memorializing attendance at any meetings with Ms. Benedetto for the above-listed time period at which a person outside of DOI was in attendance.
4. All emails, faxes, voicemails, text messages or other forms of communication that fit the above specifications and have been deleted, but remain recoverable in any way. If fulfilling this specification requires additional time, we would ask that production of documents meeting specifications 1-3 be given priority and processed separately from any potential responsive records to this specification.

For purposes of this request, the term “person outside of DOI” means any person who is **not** an employee within the DOI, subject to the following exclusions: We are **not** seeking communications to or from persons employed elsewhere within the Executive or Legislative Branches of the United States; persons employed by the executive branch of any state (i.e., state agencies); or persons who had an executed contract to provide consulting or other services to DOI at the time of the communication. You may also specifically exclude from processing and release any records that are publicly available (e.g., through regulations.gov).

Sierra Club acknowledges that the DOI FOIA website contains visitor logs for DOI headquarters.<sup>2</sup> The visitor logs posted on the website are excluded from this request. Sierra Club does, however, request all other records reflecting Ms. Benedetto’s meetings and other communications with persons outside of DOI.

This request includes communication related to DOI that is or was on any system or device, computer, phone, smartphone, tablet, email account, cloud, server or other communication system either **personal or business** that is or was owned **or** operated by Ms. Benedetto or otherwise established for the purposes of communicating with Ms. Benedetto.

This request includes all emails or other communications from any **personal** account operated by Ms. Benedetto which have been forwarded into a DOI government email account.

This request applies to all email accounts assigned to or operated by Ms. Benedetto, whether on an official DOI email address or server or not, that relate to official business of DOI. This request applies to so-called “alias” email accounts that may or may not include the name Kathleen or Kathy or Benedetto in the email address.

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<sup>2</sup> <https://www.doi.gov/foia/os/doi-headquarters-visitor-logs>.

### **EXEMPT RECORDS**

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and deliver the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

If DOI denies all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information and notify us of your appeal procedures available under the law.

### **FORMAT OF REQUESTED RECORDS**

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”).

We request all records in an electronic .pdf format that is text searchable and OCR formatted. Additionally, please provide the records either in (1) load-ready format with a CSV file index or excel spreadsheet, or, if that is not possible; (2) in .pdf format, without any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily-accessible. Please do not provide the records in a single, or “batched,” .pdf file. We appreciate the inclusion of an index.

### **RECORD DELIVERY**

We appreciate your help in expeditiously obtaining a determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Failure to comply within the statutory timeframe may result in Sierra Club filing an action before the relevant U.S. District Court to ensure timely receipt of the requested materials. You may email copies of the requested records to:

Ellen M. Richmond  
Munger, Tolles & Olson LLP  
560 Mission St., 27th Floor  
San Francisco, CA 94105  
415-512-4059  
Ellen.richmond@mto.com

Counsel for Sierra Club

Please send documents on a rolling basis. DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and

elected to produce. *See generally* 40 C.F.R. § 2.104 (describing response deadlines).

### **FEE WAIVER REQUEST**

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 43 C.F.R. § 2.45. Sierra Club is the nation's oldest grassroots organization with more than 2.9 million members and supporters nationwide. Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of environmental protection including climate change, fossil fuel energy, clean energy and clean water. Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.<sup>3</sup>

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989)(internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Sierra Club access to government records without the payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (fee waiver provision intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and non-profit public interest groups.").

As explained below, this FOIA request satisfies the factors listed in DOI's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute. FOIA provides for waiver of fees where "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 43 C.F.R. § 2.45.

DOI's regulations require that fee waiver requests address and meet each of the following criteria: (1) whether the records "concern the operations or activities of the Federal government;" (2) whether "disclosure is likely to contribute to public understanding of those operations or activities, including (i) how the contents of the records are meaningfully informative; (ii) the logical connection between the content of the records and the operations or activities; and (iii) how disclosure will contribute to the understanding of a reasonably broad audience of [interested] persons;" (iv) the requester's "identity, vocation, qualifications, and

<sup>3</sup> For recent examples, see FOIA Request Reference No. EPA-HQ-2017-2172 (fee waiver letter received Jan. 9, 2017); FOIA Request Reference No. EPA-HQ-2017-08402 (fee waiver letter received June 26, 2017); FOIA Request Reference No. EPA-HQ-2017-08571 and -08581 (fee waiver letter received June 27, 2017).

expertise regarding the requested information” and ability to disclose it; (v) the requester’s ability and intent to disseminate the information; (3) how disclosure is likely to significantly contribute to the understanding of interested persons, including whether the requested information is new and not already available, or would confirm or clarify data previously released; and (4) how the public’s understanding of the subject in question will be significantly enhanced by the disclosure. 43 C.F.R. § 2.48.

Each factor is satisfied here.

**1. The subject matter of the requested records concerns identifiable operations and activities of the government.**

The Department of Justice FOIA guide notes that “in most cases, records possessed by a federal agency will meet [the] threshold” requirement that the records concern government activities. DEPARTMENT OF JUSTICE, *Fees and Fee Waivers*, in DEPARTMENT OF JUSTICE GUIDE TO THE FREEDOM OF INFORMATION 27 (2013 ed.). Here, the requested records concern the interactions of the acting Deputy Director of the Bureau of Land Management with external parties contacting the Bureau. Because Sierra Club seeks records of communications to and from the Acting Deputy Director of the Bureau of Land Management about the official business of the Bureau (with either a government account or a personal account), by definition the requested records concern the operations and actions of the Bureau.

**2. The disclosure of the requested records is likely to contribute to public understanding of Federal government operations or activities.**

**a. The content of the requested records are meaningfully informative. (43 C.F.R. 2.48(a)(2)(i).)**

Disclosure of the requested records will allow Sierra Club to convey information to the public about the communications and correspondence of Ms. Benedetto, which will reflect her actions, objectives, and priorities as the acting Deputy Director of the Bureau of Land Management. This is an issue of heightened public interest and concern. Ms. Benedetto co-founded the Women’s Mining Coalition,<sup>4</sup> the mission of which “is to deliver the message to our legislators that a strong mining industry is vitally important to our nation.”<sup>5</sup> She has made public statements in support of weakening environmental regulations, including statements discounting the need to protect endangered species<sup>6</sup> and treating extinction as a natural process.<sup>7</sup>

<sup>4</sup> Women’s Mining Coalition, Annual Fly-In, May 6-11, 2012, [http://www.wmc-usa.org/fly\\_in2012.html](http://www.wmc-usa.org/fly_in2012.html).

<sup>5</sup> Women’s Mining Coalition, History and Mission, <http://www.wmc-usa.org/aboutus.html>.

<sup>6</sup> Department of Influence, Kathy Benedetto, Special Assistant to the Secretary of the Interior, <https://departmentofinfluence.org/person/kathy-benedetto/> (Benedetto “was part of a coalition that wanted to ‘completely throw out’ the Endangered Species Act.”);

<sup>7</sup> NM Political Report, March 23, 2017, <http://nmpoliticalreport.com/228364/meet-trump-staffers-doi-en/> (noting Benedetto’s remarks before Congress that “extinctions are part of that natural process” and comparing current biodiversity issues to the extinction of dinosaurs). Department of Influence is a DOI research site compiled by



Sierra Club and its members and supporters are extremely concerned that Ms. Benedetto will use her position within DOI to enact and/or enforce policies that benefit industry interests but ignore scientific reality, harm endangered species and other natural resources, and exacerbate global warming.<sup>8</sup> Access to records of Ms. Benedetto's external communications will reveal whether Ms. Benedetto is communicating with parties tied to fossil fuel interests, shedding light on the motivations behind policy decisions within the agency.

**b. The content of the requested records is logically connected to Federal government operations or activities. (43 C.F.R. 2.48(a)(2)(ii).)**

As explained above, the content of the requested records has a logical connection to government activities; indeed, by definition records of the communications and activities of Ms. Benedetto—a high-level staffer within the agency—are connected to government operations or activities.

**c. Disclosure will contribute to the understanding of a reasonably broad audience. (43 C.F.R. 2.48(a)(2)(iii).)**

Disclosure of Ms. Benedetto's external communications will allow Sierra Club to communicate with its 2.9 million members and supporters about the processes within DOI that are informing policy. Once the requested documents are made available, Sierra Club will analyze them and present its findings to its members and online activists and the general public in a manner that will meaningfully enhance the public's understanding of Ms. Benedetto's activities.

If Ms. Benedetto is in frequent contact with fossil fuel companies and other industry advocates and placing those interests above the overall mission of the agency in making policy for the Department, Sierra Club intends to make those facts known to members and the general public.

**d. Sierra Club is well positioned to, and plans to, disclose the information to further the understanding of a broad audience about DOI's activities. (43 C.F.R. 2.48(a)(2)(iv & v).)**

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, such as: analysis and distribution to the media, distribution through publication and mailing, posting on its website, emailing and listserv distribution to our members across the U.S., and via public meetings and events.

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Western Values Project: <https://departmentofinfluence.org/about-us/> <https://departmentofinfluence.org/about-us/>.

<sup>8</sup> See generally Sierra Club, Lay of the Land, Rep. Zinke: A Primer, Jan. 13, 2017, <http://www.sierraclub.org/lay-of-the-land/2017/01/rep-zinke-primer>, noting that "the Department of the Interior [] plays a critical role in the administration of the Endangered Species Act (ESA)" and noting concerns about science-based decisionmaking in the Department.



Sierra Club publishes information about DOI policy on its website. For example, a recent post commented on the policies of DOI under Secretary Ryan Zinke, to whom Acting Deputy Director Benedetto reports.<sup>9</sup> The website has a wide reach. Every year the Sierra Club website receives 26,298,200 unique visits and over 30 million page views; on average, the site gets 72,049 visits per day.

Sierra Club also disseminates information about public lands and DOI policy through its print communications. Sierra Magazine is a bi-monthly magazine with a printed circulation of approximately 650,000 copies. Sierra Club Insider, an electronic newsletter, is sent to nearly 3 million people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system. In the past, Sierra Club has published, posted, and disseminated numerous stories on coal and coal power plants regarding their impacts on health, the environment and alternative energy. This includes information on Sierra Club's webpages, such as our Beyond Coal Campaign portal, our Clean Energy Solutions portal and our press releases.<sup>10</sup>

Sierra Club intends to share the information received from this FOIA request with the public at large, our impacted members across the country, the media and our allies who share a common interest in the operations of the Bureau of Land Management under the Acting Deputy Director.

Sierra Club unquestionably has the specialized knowledge and ability to disseminate the information requested in the broad manner outlined above. Sierra Club has longstanding experience and expertise in the subject area of the FOIA requests, including issues related to government accountability and transparency, the Clean Air Act, Clean Water Act, climate policy, the protection of the natural environment, and the development and use of energy resources. In addition, the Club's Our Wild America campaign works to "carr[y] on the Sierra Club's long legacy of protecting America's beautiful wildlands," including work to "protect[] our public lands from mining and drilling."<sup>11</sup> The Club employs communications staff who work hard to ensure that that public is informed about the influence of fossil fuel interests in agency policy.<sup>12</sup>

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<sup>9</sup> Id.

<sup>10</sup> For example, Sierra Club sought information about coal export and permitting activities in Oregon via a state public records act request at the Port of Coos Bay. All correspondence is published online and has received extensive media attention from press releases on the subject. *See* Sierra Club Challenges Dirty and Dangerous Fossil Fuel Exports in Oregon, <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon>. Sierra Club also recently publicized the results of its FOIA requests regarding agency job freeze, a story that was picked up by the Washington Post. Alexander Rony, *Trump Admin Policy Leaves 700 CDC Jobs Vacant*, The Planet, <http://www.sierraclub.org/planet/2017/05/trump-admin-policies-leave-700-cdc-jobs-vacant>; Lena H. Sun, *Nearly 700 vacancies at CDC because of Trump administration's hiring freeze*, The Washington Post, [https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm\\_term=.6c2e70d8581e](https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm_term=.6c2e70d8581e).

<sup>11</sup> Sierra Club, Our Wild America, <http://content.sierraclub.org/ourwildamerica/>.

<sup>12</sup> See, for example, the articles published online by Virginia Cramer, Senior Press Secretary for the Sierra Club's Our Wild America campaign. <http://www.sierraclub.org/other/authors/virginia-cramer>  
<http://www.sierraclub.org/other/authors/virginia-cramer>.

**3. The disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of interested persons.**

**a. The information requested is not publicly available.**

None of the information requested is publicly available; in fact, this request specifically *excludes* any information that has already been released to the public.

**b. The release of the requested information will provide an important supplement to the limited information available on DOI's website.**

DOI has posted on its public website the visitor logs for DOI headquarters. But there is no representation that the logs represent all of the individuals who visit senior agency staffers such as Ms. Benedetto; in fact, few, if any, of the entries on the logs reflect visitors to Ms. Benedetto. Nor do the logs reflect telephonic and email communications, which are likely much more frequent than communications in person. Finally, the logs do not reflect meetings or communications Ms. Benedetto may have while traveling outside DOI headquarters. In short, there is no question that the logs are inadequate to inform the public of the extent of Ms. Benedetto's communications with external interests.

**4. The disclosure will contribute significantly to public understanding of government operations or activities.**

As discussed in section (2) above, the records requested will significantly contribute to the public understanding of governmental operations and activities. Disclosure of Ms. Benedetto's communications and other interactions with outside parties will significantly enhance the public's understanding of whether Ms. Benedetto is giving due attention to public interest in advancing the stated mission of the Bureau of Land Management or is allowing a more narrow set of interests, such as those of the coal industry with which she has close ties, greater influence over the Bureau's policies.

**5. Sierra Club has no commercial interest that would be furthered by the requested disclosure.**

Sierra Club has no commercial interest in the requested records, nor does it have any intention to use these records in any manner that "furthers a commercial, trade, or profit interest" as those terms are commonly understood. Sierra Club is a nonprofit, tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of Sierra Club's mission to inform the public on matters of vital importance to the environment and public health. Because the Sierra Club has no commercial interest at all, it is not necessary to consider the sixth criterion for a fee waiver, which compares the magnitude of the commercial interest with the public interest in disclosure.

Sierra Club respectfully requests that DOI waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A) because the public will be the primary beneficiary of this requested information, and Sierra Club's request meets all of the necessary criteria for a waiver. In the event that your agency denies a fee waiver, please send a written explanation for the denial. Please do not incur expenses beyond \$250 without first contacting counsel for Sierra Club for explicit authorization.

Thank you for your cooperation. If you find that this request is unclear in any way, please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at 415-512-4059 or by email at [ellen.richmond@mto.com](mailto:ellen.richmond@mto.com).

/s/ Ellen M. Richmond

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Counsel for Sierra Club

# EXHIBIT C

## MUNGER, TOLLES &amp; OLSON LLP

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GREGORY P. STONE  
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BRADLEY S. PHILLIPS  
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MARK B. HELM  
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MICHAEL E. SOLOFF  
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JUDITH T. KITANO  
JEROME C. ROTH  
STEPHEN D. ROSE  
GARTH T. VINCENT  
TED DANE  
STUART N. SENATOR  
MARTIN D. BERN  
DANIEL P. COLLINS  
ROBERT L. DELL ANGELO  
BRUCE A. ABBOTT  
JONATHAN E. ALTMAN  
MARY ANN TODD  
KELLY M. KLAUS  
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VIA EMAIL AND U.S. MAIL

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**Re: Freedom of Information Act Request for External Communications of Daniel Jorjani, Principal Deputy Solicitor for DOI**

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, as amended ("FOIA"), from Sierra Club, a nonprofit organization whose purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

Sierra Club previously provided a request for an identical set of records to you on September 22, 2017 (SOL-2018-00002). Sierra Club understands that you consider that request to be administratively withdrawn. Although Sierra Club disputes your characterization of its request and contends that the administrative withdrawal is invalid, in an abundance of caution and to preserve its rights Sierra Club is re-sending its request at this time.

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### **REQUESTED RECORDS**<sup>1</sup>

Sierra Club requests Records of the following type in the possession, custody, or control of the U.S. Department of Interior (“DOI”) for the time period starting from **January 23, 2017, through the present**, related to **Daniel Jorjani, Principal Deputy Solicitor for DOI**:

1. All emails, text messages, faxes, voice mails, and other form of communications from, or to, Mr. Jorjani with any person outside of DOI, as well as any phone logs or other indices which memorialize communications with such persons.
2. All calendars, whether electronic or in paper format, of Mr. Jorjani for the above listed time period.
3. All sign-in sheets or other records memorializing attendance at any meetings with Mr. Jorjani for the above-listed time period at which a person outside of DOI was in attendance.
4. All emails, faxes, voicemails, text messages or other forms of communication that have been deleted that fit the above specifications and have been deleted, but remain recoverable in any way. If fulfilling this specification requires additional time, we would ask that production of documents meeting specifications 1-3 be given priority and processed separately from any potential responsive records to this specification.

For purposes of this request, the term “person outside of DOI” means any person who is **not** an employee within the DOI, subject to the following exclusions: We are **not** seeking communications to or from persons employed elsewhere within the Executive or Legislative Branches of the United States; persons employed by the executive branch of any state (*i.e.*, state agencies); or persons who have an executed contract to provide consulting or other services to DOI. You may also specifically exclude from processing and release any records that are publicly available (*e.g.*, through regulations.gov).

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<sup>1</sup> “Records” means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, telephone conversations, faxes, emails, documents, photographs, minutes of meetings, recordings of meetings in any form, and any other compilation of data from which information can be obtained. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of DOI, including its National Headquarters and all of its Offices or subdivisions.



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Sierra Club acknowledges that the DOI FOIA website contains visitor logs for DOI headquarters.<sup>2</sup> The visitor logs posted on the website are excluded from this request. Sierra Club does, however, request all other records reflecting Mr. Jorjani's meetings and other communications with persons outside of DOI.

This request includes communication related to DOI that is or was on any system or device, computer, phone, smartphone, tablet, email account, cloud, server or other communication system either **personal or business** that is or was owned or operated by Mr. Jorjani or otherwise established for the purposes of communicating with Mr. Jorjani.

This request includes all emails or other communications from any **personal** account operated by DOI Personnel which have been forwarded into a DOI government email account.

This request applies to all email accounts assigned to or operated by Mr. Jorjani, whether on an official DOI email address or server or not, that relate to official business of DOI. This request applies to so-called "alias" email accounts that may or may not include the name of Mr. Jorjani in the email address.

### **EXEMPT RECORDS**

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and deliver the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

If DOI denies all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information and notify us of your appeal procedures available under the law.

### **FORMAT OF REQUESTED RECORDS**

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) ("In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.").

We request all records in an electronic .pdf format that is text searchable and OCR formatted. Additionally, please provide the records either in (1) load-ready format with a CSV file index or

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<sup>2</sup> <https://www.doi.gov/foia/os/doi-headquarters-visitor-logs>.

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excel spreadsheet, or, if that is not possible; (2) in .pdf format, without any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily-accessible. Please do not provide the records in a single, or “batched,” .pdf file. We appreciate the inclusion of an index.

### **RECORD DELIVERY**

We appreciate your help in expeditiously obtaining a determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Failure to comply within the statutory timeframe may result in Sierra Club filing an action before the relevant U.S. District Court to ensure timely receipt of the requested materials. You may email copies of the requested records to:

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Munger, Tolles & Olson LLP  
560 Mission St., 27th Floor  
San Francisco, CA 94105  
415-512-4059  
Ellen.richmond@mto.com

Counsel for Sierra Club

Please send documents on a rolling basis. EPA’s search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See generally* 40 C.F.R. § 2.104 (describing response deadlines).

### **FEE WAIVER REQUEST**

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 43 C.F.R. § 2.45. Sierra Club is the nation’s oldest grassroots organization with more than 2.9 million members and supporters nationwide. Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of environmental protection including climate change, fossil fuel energy, clean energy and clean water. Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers

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under FOIA.<sup>3</sup>

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989)(internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Sierra Club access to government records without the payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (fee waiver provision intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and non-profit public interest groups.").

As explained below, this FOIA request satisfies the factors listed in DOI's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute. FOIA provides for waiver of fees where "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 43 C.F.R. § 2.45.

DOI's regulations require that fee waiver requests address and meet each of the following criteria: (1) whether the records "concern the operations or activities of the Federal government;" (2) whether "disclosure is likely to contribute to public understanding of those operations or activities, including (i) how the contents of the records are meaningfully informative; (ii) the logical connection between the content of the records and the operations or activities; and (iii) how disclosure will contribute to the understanding of a reasonably broad audience of [interested] persons;" (iv) the requester's "identity, vocation, qualifications, and expertise regarding the requested information" and ability to disclose it; (v) the requester's ability and intent to disseminate the information; (3) how disclosure is likely to significantly contribute to the understanding of interested persons, including whether the requested information is new and not already available, or would confirm or clarify data previously released; and (4) how the public's understanding of the subject in question will be significantly enhanced by the disclosure. 43 C.F.R. § 2.48.

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<sup>3</sup> For a recent example, see FOIA Request Reference No. EPA-HQ-2017-2172 (fee letter waiver received Jan. 9, 2017).

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Each factor is satisfied here.

**1. The subject matter of the requested records concern identifiable operations and activities of the government.**

The Department of Justice FOIA guide notes that “in most cases, records possessed by a federal agency will meet [the] threshold” requirement that the records concern government activities. DEPARTMENT OF JUSTICE, *Fees and Fee Waivers*, in DEPARTMENT OF JUSTICE GUIDE TO THE FREEDOM OF INFORMATION 27 (2013 ed.). Here, the requested records concern the interactions of a high-level staffer—DOI’s Principal Deputy Solicitor—with external parties concerning agency business. Because Sierra Club seeks records of communications to and from top agency staff about the official business of DOI (with either a government account or a personal account), by definition the requested records concern the operations and actions of DOI.

**2. The disclosure of the requested records is likely to contribute to public understanding of Federal government operations or activities.**

**a. The content of the requested records are meaningfully informative. (43 C.F.R. 2.48(a)(2)(i).)**

Disclosure of the requested records will allow Sierra Club to convey information to the public about the communications and correspondence of Mr. Jorjani, which will reflect his actions, objectives, and priorities. This is an issue of heightened public interest and concern. Mr. Jorjani has extensive ties to fossil fuel industry interests, including through the Charles Koch Institute, the Charles Koch Foundation, and Freedom Partners,<sup>4</sup> a Koch brothers-backed organization that promotes an anti-regulation and pro-extractive agenda.<sup>5</sup>

In light of these facts, Sierra Club and its members and supporters are extremely concerned that Mr. Jorjani will use his position within DOI to enact and/or enforce policies that benefit industry interests but ignore scientific reality, harm endangered species and other natural resources, and exacerbate global warming.<sup>6</sup> Access to records of Mr. Jorjani’s external communications will

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<sup>4</sup> NM Political Report, March 23, 2017, Meet the new Trump staffers in charge of tribal, land, water and wildlife issues, <http://nmpoliticalreport.com/228364/meet-trump-staffers-doi-en/>.

<sup>5</sup> SourceWatch, Freedom Partners, Anti-Regulation Energy Initiative, [http://www.sourcewatch.org/index.php/Freedom\\_Partners#Anti-Regulation\\_Energy\\_Initiative](http://www.sourcewatch.org/index.php/Freedom_Partners#Anti-Regulation_Energy_Initiative).

<sup>6</sup> See generally Sierra Club, Lay of the Land, Rep. Zinke: A Primer, Jan. 13, 2017, <http://www.sierraclub.org/lay-of-the-land/2017/01/rep-zinke-primer>, noting that “the Department of the Interior [] plays a critical role in the administration of the Endangered Species Act (ESA)” (footnote continued)

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reveal whether he is communicating with parties tied to fossil fuel interests, shedding light on the motivations behind policy decisions within the agency.

**b. The content of the requested records is logically connected to Federal government operations or activities. (43 C.F.R. 2.48(a)(2)(ii).)**

As explained above, the content of the requested records has a logical connection to government activities; indeed, by definition records of the communications and activities of Mr. Jorjani—a high-level staffer within the agency—are connected to government operations or activities.

**c. Disclosure will contribute to the understanding of a reasonably broad audience. (43 C.F.R. 2.48(a)(2)(iii).)**

Disclosure of Mr. Jorjani's external communications will allow Sierra Club to communicate with its 2.9 million members and supporters about the processes within DOI that are informing policy. Once the requested documents are made available, Sierra Club will analyze them and present its findings to its members and online activists and the general public in a manner that will meaningfully enhance the public's understanding of Mr. Jorjani's activities.

If Mr. Jorjani is in frequent contact with fossil fuel companies and other industry advocates and taking their interests into account in making policy for the Department, Sierra Club intends to make those facts known to members and the general public.

**d. Sierra Club is well positioned to, and plans to, disclose the information to further the understanding of a broad audience about DOI's activities. (43 C.F.R. 2.48(a)(2)(iv & v).)**

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, such as: analysis and distribution to the media, distribution through publication and mailing, posting on its website, emailing and listserv distribution to our members across the U.S., and via public meetings and events.

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and noting concerns about science-based decisionmaking in the Department; Sierra Club, Lay of the Land, David Bernhardt Could Further Tip the Scales Against Public Lands, May 1, 2017, <https://sierraclub.org/foundation/lay-of-the-land/2017/05/david-bernhardt-could-further-tip-scales-against-public-lands>.

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Sierra Club publishes information about DOI policy on its website. For example, recent posts have commented on the policies of DOI under Secretary Ryan Zinke<sup>7</sup> and have commented on Deputy Secretary Bernhardt's nomination.<sup>8</sup>

The Club's website has a wide reach. Every year the Sierra Club website receives 26,298,200 unique visits and over 30 million page views; on average, the site gets 72,049 visits per day.

Sierra Club also disseminates information about public lands and DOI policy through its print communications. Sierra Magazine is a bi-monthly magazine with a printed circulation of approximately 650,000 copies. Sierra Club Insider, an electronic newsletter, is sent to nearly 3 million people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system. In the past, Sierra Club has published, posted, and disseminated numerous stories on coal and coal power plants regarding their impacts on health, the environment and alternative energy. This includes information on Sierra Club's webpages, such as our Beyond Coal Campaign portal, our Clean Energies Solutions portal and our press releases.<sup>9</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> Sierra Club, Lay of the Land, David Bernhardt Could Further Tip the Scales Against Public Lands, May 1, 2017, <https://sierraclub.org/foundation/lay-of-the-land/2017/05/david-bernhardt-could-further-tip-scales-against-public-lands>; Sierra Club, Press Release, Bernhardt a Loser for Parks, Public Lands, July 24, 2017, <http://content.sierraclub.org/press-releases/2017/07/bernhardt-loser-parks-public-lands>.

<sup>9</sup> For example, Sierra Club sought information about coal export and permitting activities in Oregon via a state public records act request at the Port of Coos Bay. All correspondence is published online and has received extensive media attention from press releases on the subject. See Sierra Club Challenges Dirty and Dangerous Fossil Fuel Exports in Oregon, <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon>. Sierra Club also recently publicized the results of its FOIA requests regarding agency job freeze, a story that was picked up by the Washington Post. Alexander Rony, *Trump Admin Policy Leaves 700 CDC Jobs Vacant*, The Planet, <http://www.sierraclub.org/planet/2017/05/trump-admin-policies-leave-700-cdc-jobs-vacant>; Lena H. Sun, *Nearly 700 vacancies at CDC because of Trump administration's hiring freeze*, The Washington Post, [https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm\\_term=.6c2e70d8581e](https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm_term=.6c2e70d8581e).



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Sierra Club intends to share the information received from this FOIA request with the public at large, our impacted members across the country, the media and our allies who share a common interest in the operations of the Department of the Interior.

Sierra Club unquestionably has the specialized knowledge and ability to disseminate the information requested in the broad manner outlined above. Sierra Club has longstanding experience and expertise in the subject area of the FOIA requests, including issues related to government accountability and transparency, the Clean Air Act, Clean Water Act, climate policy, the protection of the natural environment, and the development and use of energy resources. In addition, the Club's Our Wild America campaign works to "carr[y] on the Sierra Club's long legacy of protecting America's beautiful wildlands," including work to "protect[] our public lands from mining and drilling."<sup>10</sup> The Club employs communications staff who work hard to ensure that that public is informed about the influence of fossil fuel interests in agency policy.<sup>11</sup>

**3. The disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of interested persons.**

**a. The information requested is not publicly available.**

None of the information requested is publicly available; in fact, this request specifically *excludes* information that has already been released to the public.

**b. The release of the requested information will provide an important supplement to the limited information available on DOI's website.**

DOI has posted on its public website the visitor logs for DOI headquarters. But there is no representation that the logs represent all of the individuals who visit senior agency staffers such as Mr. Jorjani; in fact, few, if any, of the entries on the logs reflect visitors to Mr. Jorjani. Nor do the logs reflect telephonic and email communications, which are likely much more frequent than communications in person. Finally, the logs do not reflect communications Mr. Jorjani may have while traveling outside DOI headquarters. In short, there is no question that the logs are inadequate to inform the public of the extent of Mr. Jorjani's communications with external interests.

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<sup>10</sup> Sierra Club, Our Wild America, <http://content.sierraclub.org/ourwildamerica/>.

<sup>11</sup> See, for example, the articles published online by Virginia Cramer, Senior Press Secretary for the Sierra Club's Our Wild America campaign. <http://www.sierraclub.org/other/authors/virginia-cramer>.

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**4. The disclosure will contribute significantly to public understanding of government operations or activities.**

As discussed in section (2) above, the records requested will significantly contribute to the public understanding of governmental operations and activities. Disclosure of Mr. Jorjani's communications and other interactions with outside parties will significantly enhance the public's understanding of whether Mr. Jorjani is giving due attention to public interest in advancing the stated mission of DOI or is allowing a more narrow set of interests, such as those of the fossil fuel industry, greater influence over DOI's policies.

**5. Sierra Club has no commercial interest that would be furthered by the requested disclosure.**

Sierra Club has no commercial interest in the requested records, nor does it have any intention to use these records in any manner that "furthers a commercial, trade, or profit interest" as those terms are commonly understood. Sierra Club is a nonprofit, tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of Sierra Club's mission to inform the public on matters of vital importance to the environment and public health. Because the Sierra Club has no commercial interest at all, it is not necessary to consider the sixth criterion for a fee waiver, which compares the magnitude of the commercial interest with the public interest in disclosure.

Sierra Club respectfully requests that DOI waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A) because the public will be the primary beneficiary of this requested information, and Sierra Club's request meets all of the necessary criteria for a waiver. In the event that your agency denies a fee waiver, please send a written explanation for the denial. Please do not incur expenses beyond \$250 without first contacting counsel for Sierra Club for explicit authorization.

Thank you for your cooperation. If you find that this request is unclear in any way, please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at 415-512-4059 or by email at [ellen.richmond@mto.com](mailto:ellen.richmond@mto.com).

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Very truly yours,

/s/ Ellen M. Richmond  
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# EXHIBIT D

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February 9, 2018

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JORDAN D. SEGALL  
WESLEY T. L. BURRELL  
CHRISTA L. CULVER  
KAREN A. LORANG  
KURUVILLA J. OLASA  
JUSTIN P. RAPHAEL  
CRAIG A. LAVOIE  
ELIA HERRERA  
THOMAS P. CLANCY  
JOSHUA PATASHNIK  
JOSHUA S. MELTZER  
ADAM B. WEISS  
ROSE LEDA EHLER  
AMY L. GREYWIT  
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MARIA JHAI  
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JENNIFER L. BRYANT  
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ANDREW CATH. RUBENSTEIN  
JEFFREY A. PAYNE  
HANNAH L. DUBINA  
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SARA N. TAYLOR  
ALEXANDER D. TEREPA  
SAMUEL T. BOYD  
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SETH J. FORTIN  
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NICHOLAS R. SIDNEY

C. HUNTER HAYES  
KIMBERLY D. OMENS  
AARON D. PENNEKAMP  
TREVOR N. TEMPLETON  
STEPHEN T. MAYER  
SKYLAR D. BROOKS  
ELIZABETH R. AYRAL  
ELIZABETH A. KIM  
SUSAN S. HAR  
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MICHAEL C. BAKER  
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MOLLY K. PRIEDEMAN  
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CHAD GOLDER\*  
GINGER D. ANDERS\*

E. LEROY TOLLES  
(1922-2008)

\* ADMITTED IN DC AND NY ONLY  
\*\* ADMITTED IN DC AND MD ONLY

VIA EMAIL AND U.S. MAIL

Clarice Julka  
1849 C Street, NW  
Mail Stop MS-7328  
Washington, DC 20240  
[osfoia@ios.doi.gov](mailto:osfoia@ios.doi.gov)

**Re: Freedom of Information Act Request for External Communications of  
Aurelia Skipwith, Deputy Assistant Secretary for Fish, Wildlife and Parks**

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *as amended* ("FOIA"), from Sierra Club, a nonprofit organization whose purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

Writer's Direct Contact  
(415) 512-4059  
(415) 644-6959 FAX  
[Ellen.Richmond@mto.com](mailto:Ellen.Richmond@mto.com)

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### **REQUESTED RECORDS**<sup>1</sup>

Sierra Club requests Records of the following type in the possession, custody, or control of the U.S. Department of Interior (“DOI”) for the time period starting from **January 23, 2017, through the present**, related to Deputy Assistant Secretary for Fish, Wildlife and Parks **Aurelia Skipwith**.

1. All emails, text messages, faxes, voice mails, and other form of communications from, or to, Ms. Skipwith with any person outside of DOI, as well as any phone logs or other indices which memorialize communications with such persons.
2. All calendars, whether electronic or in paper format, of Ms. Skipwith for the above listed time period.
3. All sign-in sheets or other records memorializing attendance at any meetings with Ms. Skipwith for the above-listed time period at which a person outside of DOI was in attendance.
4. All emails, faxes, voicemails, text messages or other forms of communication that have been deleted that fit the above specifications and have been deleted, but remain recoverable in any way. If fulfilling this specification requires additional time, we would ask that production of documents meeting specifications 1-3 be given priority and processed separately from any potential responsive records to this specification.

For purposes of this request, the term “person outside of DOI” means any person who is **not** an employee within the DOI, subject to the following exclusions: We are **not** seeking communications to or from persons employed elsewhere within the Executive or Legislative Branches of the United States; persons employed by the executive branch of any state (*i.e.*, state agencies); or persons who have an executed contract to provide consulting or other services to DOI. You may also specifically exclude from processing and release any records that are publicly available (*e.g.*, through regulations.gov).

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<sup>1</sup> “Records” means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, telephone conversations, faxes, emails, documents, photographs, minutes of meetings, recordings of meetings in any form, and any other compilation of data from which information can be obtained. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of DOI, including its National Headquarters and all of its Offices or subdivisions.



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Sierra Club acknowledges that the DOI FOIA website contains visitor logs for DOI headquarters.<sup>2</sup> The visitor logs posted on the website are excluded from this request. Sierra Club does, however, request all other records reflecting Ms. Skipwith's meetings and other communications with persons outside of DOI.

This request includes communication related to DOI that is or was on any system or device, computer, phone, smartphone, tablet, email account, cloud, server or other communication system either **personal or business** that is or was owned or operated by Ms. Skipwith or otherwise established for the purposes of communicating with Ms. Skipwith.

This request includes all emails or other communications from any **personal** account operated by DOI Personnel which have been forwarded into a DOI government email account. This request applies to all email accounts assigned to or operated by Ms. Skipwith, whether on an official DOI email address or server or not, that relate to official business of DOI. This request applies to so-called "alias" email accounts that may or may not include the name of Ms. Skipwith in the email address.

### **EXEMPT RECORDS**

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and deliver the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

If DOI denies all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information and notify us of your appeal procedures available under the law.

### **FORMAT OF REQUESTED RECORDS**

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) ("In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.").

We request all records in an electronic .pdf format that is text searchable and OCR formatted. Additionally, please provide the records either in (1) load-ready format with a CSV file index or

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<sup>2</sup> <https://www.doi.gov/foia/os/doi-headquarters-visitor-logs>.

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excel spreadsheet, or, if that is not possible; (2) in .pdf format, without any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily-accessible. Please do not provide the records in a single, or “batched,” .pdf file. We appreciate the inclusion of an index.

### **RECORD DELIVERY**

We appreciate your help in expeditiously obtaining a determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Failure to comply within the statutory timeframe may result in Sierra Club filing an action before the relevant U.S. District Court to ensure timely receipt of the requested materials. You may email copies of the requested records to:

Ellen M. Richmond  
Munger, Tolles & Olson LLP  
560 Mission St., 27th Floor  
San Francisco, CA 94105  
415-512-4059  
Ellen.richmond@mto.com

Counsel for Sierra Club

Please send documents on a rolling basis. EPA’s search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See generally* 40 C.F.R. § 2.104 (describing response deadlines).

### **FEE WAIVER REQUEST**

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 43 C.F.R. § 2.45. Sierra Club is the nation’s oldest grassroots organization with more than 2.9 million members and supporters nationwide. Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of environmental protection including climate change, fossil fuel energy, clean energy and clean water. Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.<sup>3</sup>

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<sup>3</sup> For a recent example, see FOIA Request Reference No. EPA-HQ-2017-2172 (fee letter waiver received Jan. 9, 2017).

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FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989)(internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Sierra Club access to government records without the payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (fee waiver provision intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and non-profit public interest groups.").

As explained below, this FOIA request satisfies the factors listed in DOI's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute. FOIA provides for waiver of fees where "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 43 C.F.R. § 2.45.

DOI's regulations require that fee waiver requests address and meet each of the following criteria: (1) whether the records "concern the operations or activities of the Federal government;" (2) whether "disclosure is likely to contribute to public understanding of those operations or activities, including (i) how the contents of the records are meaningfully informative; (ii) the logical connection between the content of the records and the operations or activities; and (iii) how disclosure will contribute to the understanding of a reasonably broad audience of [interested] persons;" (iv) the requester's "identity, vocation, qualifications, and expertise regarding the requested information" and ability to disclose it; (v) the requester's ability and intent to disseminate the information; (3) how disclosure is likely to significantly contribute to the understanding of interested persons, including whether the requested information is new and not already available, or would confirm or clarify data previously released; and (4) how the public's understanding of the subject in question will be significantly enhanced by the disclosure. 43 C.F.R. § 2.48.

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Each factor is satisfied here.

**1. The subject matter of the requested records concern identifiable operations and activities of the government.**

The Department of Justice FOIA guide notes that “in most cases, records possessed by a federal agency will meet [the] threshold” requirement that the records concern government activities. DEPARTMENT OF JUSTICE, *Fees and Fee Waivers*, in DEPARTMENT OF JUSTICE GUIDE TO THE FREEDOM OF INFORMATION 27 (2013 ed.). Here, the requested records concern the interactions of the Deputy Assistant Secretary for Fish, Wildlife and Parks with persons outside the agency. Because Sierra Club seeks records of communications to and from a top Fish and Wildlife Service leader (with either a government account or a personal account), by definition the requested records concern the operations and actions of DOI.

**2. The disclosure of the requested records is likely to contribute to public understanding of Federal government operations or activities.**

**a. The content of the requested records are meaningfully informative. (43 C.F.R. 2.48(a)(2)(i).)**

Disclosure of the requested records will allow Sierra Club to convey information to the public about the communications and correspondence of Ms. Skipwith, which will reflect her actions, objectives, and priorities. This is an issue of heightened public interest and concern. Ms. Skipwith has a history of close alignment with polluting industries, including a career at the multinational corporation Monsanto.<sup>4</sup> Her appointment is reportedly “focused on tackling the issues of energy development on public lands.”<sup>5</sup>

Sierra Club and its members and supporters are extremely concerned that Ms. Skipwith will use her position to enact and/or enforce policies that benefit industry interests at the expense of science.<sup>6</sup> Access to records of Ms. Skipwith’s external communications will reveal whether she

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<sup>4</sup> Department of Influence, Aurelia Skipwith, <https://departmentofinfluence.org/person/aurelia-skipwith/>.

<sup>5</sup> John Siliciano, Washington Examiner, Apr. 6, 2017, Zinke Beefs Up Staff to Advance Trump’s Energy Goals, <http://www.washingtonexaminer.com/zinke-beefs-up-staff-to-advance-trumps-energy-goals/article/2619589>.

<sup>6</sup> See generally Sierra Club, Lay of the Land, Rep. Zinke: A Primer, Jan. 13, 2017, <http://www.sierraclub.org/lay-of-the-land/2017/01/rep-zinke-primer>, noting that “the Department of the Interior [] plays a critical role in the administration of the Endangered Species Act (ESA)” (footnote continued)

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is communicating with industry representatives seeking energy development on public lands, shedding light on the motivations behind policy decisions within the agency.

**b. The content of the requested records is logically connected to Federal government operations or activities. (43 C.F.R. 2.48(a)(2)(ii).)**

As explained above, the content of the requested records has a logical connection to government activities; indeed, by definition records of the communications and activities of Ms. Skipwith—a high-level staffer within the agency—are connected to government operations or activities.

**c. Disclosure will contribute to the understanding of a reasonably broad audience. (43 C.F.R. 2.48(a)(2)(iii).)**

Disclosure of Ms. Skipwith's external communications will allow Sierra Club to communicate with its 2.9 million members and supporters about the processes within DOI that are informing policy. Once the requested documents are made available, Sierra Club will analyze them and present its findings to its members and online activists and the general public in a manner that will meaningfully enhance the public's understanding of Ms. Skipwith's activities.

If Ms. Skipwith is in frequent contact with fossil fuel companies and other industry advocates and taking their interests into account in making policy for the Department, Sierra Club intends to make those facts known to members and the general public.

**d. Sierra Club is well positioned to, and plans to, disclose the information to further the understanding of a broad audience about DOI's activities. (43 C.F.R. 2.48(a)(2)(iv & v).)**

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, such as: analysis and distribution to the media, distribution through publication and mailing, posting on its website, emailing and listserv distribution to our members across the U.S., and via public meetings and events.

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and noting concerns about science-based decisionmaking in the Department; Sierra Club, Lay of the Land, David Bernhardt Could Further Tip the Scales Against Public Lands, May 1, 2017, <https://sierraclub.org/foundation/lay-of-the-land/2017/05/david-bernhardt-could-further-tip-scales-against-public-lands>.

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Sierra Club publishes information about DOI policy on its website. For example, recent posts have commented on the policies of DOI under new appointees such as Secretary Ryan Zinke<sup>7</sup> and Deputy Secretary Bernhardt.<sup>8</sup>

The Club's website has a wide reach. Every year the Sierra Club website receives 26,298,200 unique visits and over 30 million page views; on average, the site gets 72,049 visits per day.

Sierra Club also disseminates information about public lands and DOI policy through its print communications. Sierra Magazine is a bi-monthly magazine with a printed circulation of approximately 650,000 copies. Sierra Club Insider, an electronic newsletter, is sent to nearly 3 million people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system. In the past, Sierra Club has published, posted, and disseminated numerous stories on coal and coal power plants regarding their impacts on health, the environment and alternative energy. This includes information on Sierra Club's webpages, such as our Beyond Coal Campaign portal, our Clean Energies Solutions portal and our press releases.<sup>9</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> Sierra Club, Lay of the Land, David Bernhardt Could Further Tip the Scales Against Public Lands, May 1, 2017, <https://sierraclub.org/foundation/lay-of-the-land/2017/05/david-bernhardt-could-further-tip-scales-against-public-lands>; Sierra Club, Press Release, Bernhardt a Loser for Parks, Public Lands, July 24, 2017, <http://content.sierraclub.org/press-releases/2017/07/bernhardt-loser-parks-public-lands>.

<sup>9</sup> For example, Sierra Club sought information about coal export and permitting activities in Oregon via a state public records act request at the Port of Coos Bay. All correspondence is published online and has received extensive media attention from press releases on the subject. See Sierra Club Challenges Dirty and Dangerous Fossil Fuel Exports in Oregon, <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon>. Sierra Club also recently publicized the results of its FOIA requests regarding agency job freeze, a story that was picked up by the Washington Post. Alexander Rony, *Trump Admin Policy Leaves 700 CDC Jobs Vacant*, The Planet, <http://www.sierraclub.org/planet/2017/05/trump-admin-policies-leave-700-cdc-jobs-vacant>; Lena H. Sun, *Nearly 700 vacancies at CDC because of Trump administration's hiring freeze*, The Washington Post, [https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm\\_term=.6c2e70d8581e](https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm_term=.6c2e70d8581e).



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Sierra Club intends to share the information received from this FOIA request with the public at large, our impacted members across the country, the media and our allies who share a common interest in the operations of the Department of the Interior.

Sierra Club unquestionably has the specialized knowledge and ability to disseminate the information requested in the broad manner outlined above. Sierra Club has longstanding experience and expertise in the subject area of the FOIA requests, including issues related to government accountability and transparency, the Clean Air Act, Clean Water Act, climate policy, the protection of the natural environment, and the development and use of energy resources. In addition, the Club's Our Wild America campaign works to "carr[y] on the Sierra Club's long legacy of protecting America's beautiful wildlands," including work to "protect[] our public lands from mining and drilling."<sup>10</sup> The Club employs communications staff who work hard to ensure that that public is informed about the influence of industry interests in agency policy.<sup>11</sup>

**3. The disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of interested persons.**

**a. The information requested is not publicly available.**

None of the information requested is publicly available; in fact, this request specifically *excludes* information that has already been released to the public.

**b. The release of the requested information will provide an important supplement to the limited information available on DOI's website.**

DOI has posted on its public website the visitor logs for DOI headquarters. But there is no representation that the logs represent all of the individuals who visit senior agency staffers such as Ms. Skipwith; in fact, few, if any, of the entries on the logs reflect visitors to Ms. Skipwith. Nor do the logs reflect telephonic and email communications, which are likely much more frequent than communications in person. Finally, the logs do not reflect communications Ms. Skipwith may have while traveling outside DOI headquarters. In short, there is no question that the logs are inadequate to inform the public of the extent of Ms. Skipwith's communications with external interests.

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<sup>10</sup> Sierra Club, Our Wild America, <http://content.sierraclub.org/ourwildamerica/>.

<sup>11</sup> See, for example, the articles published by online by Virginia Cramer, Senior Press Secretary for the Sierra Club's Our Wild America campaign. <http://www.sierraclub.org/other/authors/virginia-cramer>.

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**4. The disclosure will contribute significantly to public understanding of government operations or activities.**

As discussed in section (2) above, the records requested will significantly contribute to the public understanding of governmental operations and activities. Disclosure of Ms. Skipwith's communications and other interactions with outside parties will significantly enhance the public's understanding of whether Ms. Skipwith is giving due attention to public interest in advancing the stated mission of DOI or is allowing a more narrow set of interests, such as those of the fossil fuel industry, greater influence over DOI's policies.

**5. Sierra Club has no commercial interest that would be furthered by the requested disclosure.**

Sierra Club has no commercial interest in the requested records, nor does it have any intention to use these records in any manner that "furthers a commercial, trade, or profit interest" as those terms are commonly understood. Sierra Club is a nonprofit, tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of Sierra Club's mission to inform the public on matters of vital importance to the environment and public health. Because the Sierra Club has no commercial interest at all, it is not necessary to consider the sixth criterion for a fee waiver, which compares the magnitude of the commercial interest with the public interest in disclosure.

Sierra Club respectfully requests that DOI waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A) because the public will be the primary beneficiary of this requested information, and Sierra Club's request meets all of the necessary criteria for a waiver. In the event that your agency denies a fee waiver, please send a written explanation for the denial. Please do not incur expenses beyond \$250 without first contacting counsel for Sierra Club for explicit authorization.

Thank you for your cooperation. If you find that this request is unclear in any way, please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at 415-512-4059 or by email at [ellen.richmond@mto.com](mailto:ellen.richmond@mto.com).

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Very truly yours,

/s/ Ellen M. Richmond

Ellen M. Richmond  
Munger, Tolles & Olson LLP  
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415-512-4059  
Ellen.richmond@mto.com

Counsel for Sierra Club

EMR:mp  
37764684.1

## EXHIBIT E



February 20, 2019

*Via email ([osfoia@ios.doi.gov](mailto:osfoia@ios.doi.gov)) and certified mail*

**Clarice Julka**  
**1849 C Street, NW**  
**Mail Stop MS-7328**  
**Washington, DC 20240**

**Re: Freedom of Information Act Request: External Communications of Ryan Zinke, David Bernhardt, James Cason, Scott Cameron, Aurelia Skipwith, and Susan Combs**

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA”), from Sierra Club, a nonprofit organization whose purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

This request updates the time period relevant to two prior FOIA requests. Sierra Club previously requested the same records described below for custodians **Ryan Zinke, David Bernhardt, James Cason, Scott Cameron, and Susan Combs (request # OS-2017-01308, Sept. 22, 2017)** and for custodian **Aurelia Skipwith (request # not available; request dated Feb. 9, 2018)**. Those requests covered the time period from January 23, 2017 through the date of your search for records in response to this request.

Sierra Club understands that the searches for the above-listed custodians were conducted in March 2018. Sierra Club now requests that those searches be updated through the date of an updated search, as set forth in more detail below.

### **REQUESTED RECORDS<sup>1</sup>**

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<sup>1</sup> “Records” means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, telephone conversations, faxes, emails, documents, photographs, minutes of meetings, recordings of meetings in any form, and any other compilation of data from which information can be obtained.

Sierra Club requests Records of the following type in the possession, custody, or control of the U.S. Department of Interior (“DOI”) for the time period starting from **March 1, 2018, through the date of your search for records in response to this request**, related to the following individuals (the “DOI Personnel”). **In order to ensure the timely production of information, please do not complete the search for records until such time as you are able to promptly review and produce them.**

- A. Secretary of the Interior **Ryan Zinke**
  - B. Deputy Secretary of the Interior **David Bernhardt**
  - C. Associate Deputy Secretary of the Interior **James Cason**
  - D. Principal Deputy Assistant Secretary for Policy, Management and Budget **Scott Cameron**
  - E. Assistant Secretary for Policy Management, and Budget **Susan Combs**
  - F. Deputy Assistant Secretary for Fish, Wildlife and Parks **Aurelia Skipwith**
- 
- 1. All emails, text messages, faxes, voice mails, and other form of communications from, or to, the DOI Personnel with any person outside of DOI, as well as any phone logs or other indices which memorialize communications with such persons.
  - 2. All calendars, whether electronic or in paper format, of the DOI Personnel for the above listed time period.
  - 3. All sign-in sheets or other records memorializing attendance at any meetings with the DOI Personnel for the above-listed time period at which a person outside of DOI was in attendance.
  - 4. All emails, faxes, voicemails, text messages or other forms of communication that have been deleted that fit the above specifications and have been deleted, but remain recoverable in any way. If fulfilling this specification requires additional time, we would ask that production of documents meeting specifications 1-3 be given priority and processed separately from any potential responsive records to this specification.

For purposes of this request, the term “person outside of DOI” means any person who is **not** an employee within the DOI, subject to the following exclusions: We are **not** seeking communications to or from persons employed elsewhere within the Executive or Legislative Branches of the United States; persons employed by the executive branch of any state (i.e., state agencies); or persons who have an executed contract to provide consulting or other services to DOI. You may also specifically exclude from processing and release any records that are publicly available (e.g., through regulations.gov).

---

All of the foregoing are included in this request if they are in the possession of or otherwise under the control of DOI, including its National Headquarters and all of its Offices or subdivisions.



This request excludes any records that may have already been provided to Sierra Club in response to prior FOIA requests.

Sierra Club acknowledges that the DOI FOIA website contains visitor logs for DOI headquarters.<sup>2</sup> The visitor logs posted on the website are excluded from this request. Sierra Club does, however, request all other records reflecting the DOI Personnel's meetings and other communications with persons outside of DOI. The DOI FOIA website also contains a version of Secretary Zinke's calendar that is redacted,<sup>3</sup> as well as redacted versions of the Secretary's travel logs.<sup>4</sup> Sierra Club requests copies of Secretary Zinke's calendar and travel logs for the period specified above that contain no redactions other than redactions of phone numbers or conference dial-in information.

This request includes communication related to DOI that is or was on any system or device, computer, phone, smartphone, tablet, email account, cloud, server or other communication system either **personal or business** that is or was owned or operated by the DOI Personnel or otherwise established for the purposes of communicating with the DOI Personnel.

This request includes all emails or other communications from any **personal** account operated by DOI Personnel which have been forwarded into a DOI government email account.

This request applies to all email accounts assigned to or operated by the DOI Personnel, whether on an official DOI email address or server or not, that relate to official business of DOI. This request applies to so-called "alias" email accounts that may or may not include the name of the DOI Personnel in the email address.

### **EXEMPT RECORDS**

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and deliver the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

If DOI denies all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information and notify us of your appeal procedures available under the law.

### **FORMAT OF REQUESTED RECORDS**

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) ("In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested

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<sup>2</sup> <https://www.doi.gov/foia/os/doi-headquarters-visitor-logs>.

<sup>3</sup> <https://www.doi.gov/foia/os/secretarial-schedules>.

<sup>4</sup> <https://www.doi.gov/foia/os/os-foia-library-travel-records>.

by the person if the record is readily reproducible by the agency in that form or format.”).

We request all records in an electronic .pdf format that is text searchable and OCR formatted. Additionally, please provide the records either in (1) load-ready format with a CSV file index or excel spreadsheet, or, if that is not possible; (2) in .pdf format, without any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily-accessible. Please do not provide the records in a single, or “batched,”.pdf file. We appreciate the inclusion of an index.

### **RECORD DELIVERY**

We appreciate your help in expeditiously obtaining a determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Failure to comply within the statutory timeframe may result in Sierra Club filing an action before the relevant U.S. District Court to ensure timely receipt of the requested materials. You may email copies of the requested records to:

Ellen M. Richmond  
Conrad & Metlitzky LLP  
Four Embarcadero Center, Suite 1400  
San Francisco, CA 94111  
erichmond@conradmetlitzky.com

Counsel for Sierra Club

Please send documents on a rolling basis. EPA’s search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See generally* 40 C.F.R. § 2.104 (describing response deadlines).

### **FEE WAIVER REQUEST**

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 43 C.F.R. § 2.45. Sierra Club is the nation’s oldest grassroots organization with more than 2.9 million members and supporters nationwide. Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of environmental protection including climate change, fossil fuel energy, clean energy and clean water. Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.<sup>5</sup>

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<sup>5</sup> For a recent example, see FOIA Request Reference No. EPA-HQ-2017-2172 (fee letter waiver received Jan. 9, 2017).

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989)(internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Sierra Club access to government records without the payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (fee waiver provision intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and non-profit public interest groups.").

As explained below, this FOIA request satisfies the factors listed in DOI's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute. FOIA provides for waiver of fees where "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 43 C.F.R. § 2.45.

DOI's regulations require that fee waiver requests address and meet each of the following criteria: (1) whether the records "concern the operations or activities of the Federal government;" (2) whether "disclosure is likely to contribute to public understanding of those operations or activities, including (i) how the contents of the records are meaningfully informative; (ii) the logical connection between the content of the records and the operations or activities; and (iii) how disclosure will contribute to the understanding of a reasonably broad audience of [interested] persons;" (iv) the requester's "identity, vocation, qualifications, and expertise regarding the requested information" and ability to disclose it; (v) the requester's ability and intent to disseminate the information; (3) how disclosure is likely to significantly contribute to the understanding of interested persons, including whether the requested information is new and not already available, or would confirm or clarify data previously released; and (4) how the public's understanding of the subject in question will be significantly enhanced by the disclosure. 43 C.F.R. § 2.48.

Each factor is satisfied here.

**1. The subject matter of the requested records concern identifiable operations and activities of the government.**

The Department of Justice FOIA guide notes that "in most cases, records possessed by a federal agency will meet [the] threshold" requirement that the records concern government activities. DEPARTMENT OF JUSTICE, *Fees and Fee Waivers*, in DEPARTMENT OF JUSTICE GUIDE TO THE FREEDOM OF INFORMATION 27 (2013 ed.). Here, the requested records concern the interactions of

high-level agency staffers, including the agency head, with external parties concerning agency business. Because Sierra Club seeks records of communications to and from top agency staff about the official business of DOI (with either a government account or a personal account), by definition the requested records concern the operations and actions of DOI.

**2. The disclosure of the requested records is likely to contribute to public understanding of Federal government operations or activities.**

**a. The content of the requested records are meaningfully informative. (43 C.F.R. 2.48(a)(2)(i).)**

Disclosure of the requested records will allow Sierra Club to convey information to the public about the communications and correspondence of the DOI Personnel, which will reflect their actions, objectives, and priorities. This is an issue of heightened public interest and concern. The DOI Personnel have a history of close alignment with fossil fuel interests and have moved to implement the President's pro-extraction agenda at the expense of public health and natural resource protection. The following list contains just a sample of the media coverage—including Sierra Club coverage—relating to the connections between the DOI Personnel and the fossil fuel industry.

- Secretary Ryan Zinke:
  - Sierra Club, Lay of the Land, Rep. Zinke: A Primer, Jan. 13, 2017, <http://www.sierraclub.org/lay-of-the-land/2017/01/rep-zinke-primer> (noting Zinke's opposition to reform of the coal leasing program and support for mining, drilling and fracking)
- Deputy Secretary David Bernhardt:
  - Sierra Club, Lay of the Land, David Bernhardt Could Further Tip the Scales Against Public Lands, May 1, 2017, <https://sierraclub.org/foundation/lay-of-the-land/2017/05/david-bernhardt-could-further-tip-scales-against-public-lands> (noting close ties to the oil industry)
  - Westwise, Trump Wants This Oil Lobbyist to Watch Over Public Land and Water – And His Former Clients, April 21, 2017, <https://medium.com/westwise/trump-wants-this-oil-lobbyist-to-watch-over-public-land-and-water-and-his-former-clients-2d1e97170c29> (noting conflicts of interest resulting from Bernhardt's ties to extractive industries)
- Associate Deputy Secretary James Cason:
  - Indian Country Today, Interior's James Cason Under Investigation, Sept. 14, 2007, <https://indiancountrymedianetwork.com/news/interiors-james-cason-under-examination/> (“Cason has a long history of involvement at Interior. He is among a group of current and former Interior officials from Colorado who all shared the common experience of having been advocates or lobbyists for big oil, gas, coal and mining corporations that operate on public and Indian lands.”).

- Principal Deputy Assistant Secretary for Policy, Management and Budget Scott Cameron:
  - Department of Influence,<sup>6</sup> Scott Cameron, <https://departmentofinfluence.org/person/scott-cameron/> (“Between 2013 and 2017, Cameron held several positions at various companies, including working as a senior advisor at Dawson and Associates. While he worked at Dawson and Associates, the firm lobbied for companies in extractive industries, including the Marcellus Shale Coalition, Shell Oil Company, the Mosaic Company, and the Miami-Dade Limestone Products Association.”).
- Assistant Secretary for Policy Management, and Budget Susan Combs:
  - Department of Influence, Susan Combs, <https://departmentofinfluence.org/person/susan-combs/> (“Susan Combs has been a figure in Texas politics for decades and has consistently worked to undermine the Endangered Species Act. . . . Since 2015, Combs has worked as a ‘Principal’ at the Maravillas Group and has been a Senior Visiting Fellow at the Texas Public Policy Foundation, a right-wing think tank that has received significant funding from ExxonMobil, ConocoPhillips, Devon Energy, and Koch brother affiliates.”)
- Deputy Assistant Secretary for Fish, Wildlife and Parks Aurelia Skipwith:
  - Ms. Skipwith has a history of close alignment with polluting industries, including a career at the multinational corporation Monsanto. Department of Influence, Aurelia Skipwith, <https://departmentofinfluence.org/person/aurelia-skipwith/>.
  - Her appointment was reportedly “focused on tackling the issues of energy development on public lands.” John Siliciano, *Washington Examiner*, Apr. 6, 2017, *Zinke Beefs Up Staff to Advance Trump’s Energy Goals*, <http://www.washingtonexaminer.com/zinke-beefs-up-staff-to-advance-trumps-energygoals/article/2619589>.

In light of these facts, Sierra Club and its members and supporters are extremely concerned that the DOI Personnel will use their positions within DOI to enact and/or enforce policies that benefit industry interests but ignore scientific reality, harm endangered species and other natural resources, and exacerbate global warming.<sup>7</sup> Access to records of the DOI Personnel’s external communications will reveal whether they are communicating with parties tied to fossil fuel interests, shedding light on the motivations behind policy decisions within the agency.

**b. The content of the requested records is logically connected to Federal government operations or activities. (43 C.F.R. 2.48(a)(2)(ii).)**

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<sup>6</sup> Department of Influence is a DOI research site compiled by Western Values Project: <https://departmentofinfluence.org/about-us/>.

<sup>7</sup> See generally Sierra Club, Lay of the Land, Rep. Zinke: A Primer, Jan. 13, 2017, <http://www.sierraclub.org/lay-of-the-land/2017/01/rep-zinke-primer>, noting that “the Department of the Interior [] plays a critical role in the administration of the Endangered Species Act (ESA)” and noting concerns about science-based decisionmaking in the Department; Sierra Club, Lay of the Land, David Bernhardt Could Further Tip the Scales Against Public Lands, May 1, 2017, <https://sierraclub.org/foundation/lay-of-the-land/2017/05/david-bernhardt-could-further-tip-scales-against-public-lands>.

As explained above, the content of the requested records has a logical connection to government activities; indeed, by definition records of the communications and activities of the DOI Personnel—high-level staffers within the agency—are connected to government operations or activities.

**c. Disclosure will contribute to the understanding of a reasonably broad audience. (43 C.F.R. 2.48(a)(2)(iii).)**

Disclosure of the DOI Personnel's external communications will allow Sierra Club to communicate with its 2.9 million members and supporters about the processes within DOI that are informing policy. Once the requested documents are made available, Sierra Club will analyze them and present its findings to its members and online activists and the general public in a manner that will meaningfully enhance the public's understanding of the DOI Personnel's activities.

If the DOI Personnel are in frequent contact with fossil fuel companies and other industry advocates and taking their interests into account in making policy for the Department, Sierra Club intends to make those facts known to members and the general public.

**d. Sierra Club is well positioned to, and plans to, disclose the information to further the understanding of a broad audience about DOI's activities. (43 C.F.R. 2.48(a)(2)(iv & v).)**

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, such as: analysis and distribution to the media, distribution through publication and mailing, posting on its website, emailing and listserv distribution to our members across the U.S., and via public meetings and events.

Sierra Club publishes information about DOI policy on its website. For example, recent posts have commented on the policies of DOI under Secretary Ryan Zinke<sup>8</sup> and have commented on Deputy Secretary Bernhardt's nomination.<sup>9</sup>

The Club's website has a wide reach. Every year the Sierra Club website receives 26,298,200 unique visits and over 30 million page views; on average, the site gets 72,049 visits per day.

Sierra Club also disseminates information about public lands and DOI policy through its print communications. Sierra Magazine is a bi-monthly magazine with a printed circulation of

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<sup>8</sup> Id.

<sup>9</sup> Sierra Club, Lay of the Land, David Bernhardt Could Further Tip the Scales Against Public Lands, May 1, 2017, <https://sierraclub.org/foundation/lay-of-the-land/2017/05/david-bernhardt-could-further-tip-scales-against-public-lands>; Sierra Club, Press Release, Bernhardt a Loser for Parks, Public Lands, July 24, 2017, <http://content.sierraclub.org/press-releases/2017/07/bernhardt-loser-parks-public-lands>.



approximately 650,000 copies. Sierra Club Insider, an electronic newsletter, is sent to nearly 3 million people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system. In the past, Sierra Club has published, posted, and disseminated numerous stories on coal and coal power plants regarding their impacts on health, the environment and alternative energy. This includes information on Sierra Club's webpages, such as our Beyond Coal Campaign portal, our Clean Energy Solutions portal and our press releases.<sup>10</sup>

Sierra Club intends to share the information received from this FOIA request with the public at large, our impacted members across the country, the media and our allies who share a common interest in the operations of the Department of the Interior.

Sierra Club unquestionably has the specialized knowledge and ability to disseminate the information requested in the broad manner outlined above. Sierra Club has longstanding experience and expertise in the subject area of the FOIA requests, including issues related to government accountability and transparency, the Clean Air Act, Clean Water Act, climate policy, the protection of the natural environment, and the development and use of energy resources. In addition, the Club's Our Wild America campaign works to "carr[y] on the Sierra Club's long legacy of protecting America's beautiful wildlands," including work to "protect[] our public lands from mining and drilling."<sup>11</sup> The Club employs communications staff who work hard to ensure that that public is informed about the influence of fossil fuel interests in agency policy.<sup>12</sup>

**3. The disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of interested persons.**

**a. The information requested is not publicly available.**

None of the information requested is publicly available; in fact, this request specifically *excludes* information that has already been released to the public.

**b. The release of the requested information will provide an important supplement to the limited information available on DOI's website.**

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<sup>10</sup> For example, Sierra Club sought information about coal export and permitting activities in Oregon via a state public records act request at the Port of Coos Bay. All correspondence is published online and has received extensive media attention from press releases on the subject. *See* Sierra Club Challenges Dirty and Dangerous Fossil Fuel Exports in Oregon, <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon>. Sierra Club also recently publicized the results of its FOIA requests regarding agency job freeze, a story that was picked up by the Washington Post. Alexander Rony, *Trump Admin Policy Leaves 700 CDC Jobs Vacant*, The Planet, <http://www.sierraclub.org/planet/2017/05/trump-admin-policies-leave-700-cdc-jobs-vacant>; Lena H. Sun, *Nearly 700 vacancies at CDC because of Trump administration's hiring freeze*, The Washington Post, [https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm\\_term=.6c2e70d8581e](https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm_term=.6c2e70d8581e).

<sup>11</sup> Sierra Club, Our Wild America, <http://content.sierraclub.org/ourwildamerica/>.

<sup>12</sup> See, for example, the articles published by online by Virginia Cramer, Senior Press Secretary for the Sierra Club's Our Wild America campaign. <http://www.sierraclub.org/other/authors/virginia-cramer>.

DOI has posted on its public website the visitor logs for DOI headquarters. But there is no representation that the logs represent all of the individuals who visit senior agency staffers such as the DOI Personnel; in fact, few, if any, of the entries on the logs reflect visitors to the DOI Personnel. Nor do the logs reflect telephonic and email communications, which are likely much more frequent than communications in person. Finally, the logs do not reflect communications the DOI Personnel may have while traveling outside DOI headquarters. In short, there is no question that the logs are inadequate to inform the public of the extent of the DOI Personnel's communications with external interests.

DOI also has posted on its website redacted versions of Secretary Zinke's calendars and travel logs. Sierra Club does not object to redactions that obscure telephone numbers and similar conference call dial-in information, but is requesting copies of these materials that do not contain any other redactions. Many of the redactions appear to obscure important information about the individuals that the Secretary interacts with. For instance, in the travel logs, the "Vehicle Manifest" and "Elevator Manifest" information is redacted, as in the example below.<sup>13</sup> Assuming the redactions obscure information about which individuals traveled with (and thus had private access to) the Secretary, Sierra Club requests that information.

9:30-9:50pm MST: Depart Airport en route RON  
 Location: 409 2nd Street West  
 Whitefish, MT 59937  
 Vehicle Manifest: **Non-Responsive**  
 Drive Time: ~20 minutes without traffic

#### **4. The disclosure will contribute significantly to public understanding of government operations or activities.**

As discussed in section (2) above, the records requested will significantly contribute to the public understanding of governmental operations and activities. Disclosure of the DOI Personnel's communications and other interactions with outside parties will significantly enhance the public's understanding of whether the DOI Personnel is giving due attention to public interest in advancing the stated mission of DOI or is allowing a more narrow set of interests, such as those of the fossil fuel industry, greater influence over DOI's policies.

#### **5. Sierra Club has no commercial interest that would be furthered by the requested disclosure.**

<sup>13</sup> From log for Thursday, March 9, 2017, <https://www.doi.gov/sites/doi.gov/files/uploads/17-001059ca.pdf>, at page 3.

Sierra Club has no commercial interest in the requested records, nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. Sierra Club is a nonprofit, tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health. Because the Sierra Club has no commercial interest at all, it is not necessary to consider the sixth criterion for a fee waiver, which compares the magnitude of the commercial interest with the public interest in disclosure.

Sierra Club respectfully requests that DOI waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A) because the public will be the primary beneficiary of this requested information, and Sierra Club’s request meets all of the necessary criteria for a waiver. In the event that your agency denies a fee waiver, please send a written explanation for the denial. Please do not incur expenses beyond \$250 without first contacting counsel for Sierra Club for explicit authorization.

Thank you for your cooperation. If you find that this request is unclear in any way, please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at 415-343-7104 or by email at [erichmond@conradmetlitzky.com](mailto:erichmond@conradmetlitzky.com).

/s/ Ellen M. Richmond

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Counsel for Sierra Club